IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4788 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VORA MUHAMAD TAHIRBHAI ABDUL LATIF - Petitioner(s)
Versus
STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :
MR MC SHAH for Petitioner(s) : 1,
MR SATYAM CHHAYA, AGP for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2 - 3.
MR MB PARIKH for Respondent(s) : 4,
RULE UNSERVED for Respondent(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 19/12/2006

ORAL JUDGMENT

1. The petitioner has preferred the petition for

challenging the impugned notices(Annexure E & F) issued by respondent No.3 and has prayed to restrain the respondent Nos. 1 to 3 and/or its officers or agents interfering the petitioner's possession of plot No.5 of City Survey No. 3252 of Vijapur Nagarpalika.

2. Heard Mr. H.M. Parikh for Mr. M.C. Shah for the petitioner, Mr. Chhaya, learned AGP for the State Authorities and Mr. M.B. Parikh for respondent No.4.

3. When the matter is taken up for final hearing, Mr. Chhaya, learned AGP states that as stated by the petitioner, in earlier Civil Application No. 3677 of 2006 in Special Civil Application No. 4788 of 1999, the present petition was required to be considered with the group of Special Civil Application No. 4829 of 1999 and allied matters, which are being allowed by the decision of this Court (Coram : Akil Kureshi, J.) vide order dated 21.12.2005. Mr. Chhaya, confirms the position that the present petitioner is similarly situated with the petitioners of Special Civil Application No. 4829 of 1999 and allied matters which have been decided on 21.12.2005. It appears from the first order, which came to be passed by this Court on 30.11.1999 that the present petition was heard with the group of Special Civil Application Nos. 1084 of 1999 to 1089 of 1999 with 4860 of 1999

and 4910 of 1999. There is no dispute on the point that the present petitioner is challenging the very notices for the same land/construction in their occupation and the matter is covered by the decision of this Court dated 21.12.2005 in the above referred matter. It may be recorded that this Court in the above referred decision observed at para 10 and 11 as under:

> *"10. This objection need to be examined in light of the factual aspects involved in this group of petitions. Firstly it is not in dispute that Vijapur Nagarpalika held the public auction in the year 1968 calling for the interested parties to bid for 36 sub plots which were part of city survey no. 3252. It is not in dispute that pursuant to this public auction, highest bidders were allotted plots on lease. It is not in dispute that on the plots so leased out, the construction was carried out either by lease holders or sub-tenants. It is not in dispute that all these petitioners are occupying constructed properties over the plots so leased out. It is equally not in dispute that the petitioners are carrying on their small business over the constructed properties since several decades. The construction was carried out with prior permission from the municipality and the same is not said to be not in accordance with building rules and regulations. The petitioners having been paying municipal taxes for their occupancy of the constructed premises. After 1968 for the first time in the year 1999 Government initiated steps to remove the construction. The only objection against the same was that the plots were leased out by the Nagarpalika though the plot originally belonged to the Government. Validity of this contention, I have not examined for want of sufficient material. Obviously, the petitioners would not be in a position to establish the title of the Nagarpalika over the lands in question.*

Except for stating that the lands were shown in the revenue records in the name of Nagarpalika, they have not been able to state anything further in this regard. The State Government except for making assertion that the land did not belong to Nagarpalika and it was the land belonging to State Government, has produced no further record. Irrespective of this question, important aspect of this matter is whether the State Government is permitted to take up this issue after more than 30 years. If at all it was an error, the error was on the part of the Nagarpalika to hold out a promise to the general public at large that Nagarpalika as the owner of the land in question is authorised to lease out the same to the highest bidder. Additionally, it was also inaction on the part of the Government, for more than 30 years ,to rectify this mistake even if it is presumed to be the one.

11. In so far as the petitioners are concerned at any rate they would be the innocent sufferers of error on the part of the Nagarpalika on one hand and inaction on the part of the Government on the other hand. The petitioners have put in their hard earned money for acquiring a small place for business. By permitting the Government to proceed further with the proposed action of removing the construction, this Court would be authorising the Government in ousting the petitioners who can be under no circumstances faulted for having acquired the rights over the properties in question. Considering the fact that Nagarpalika held public auction in the year 1968 pursuant to which the plots were leased out, considering the fact that from the year 1968 till 1999 Government took no action to initiate any proceedings in this regard, considering the fact that there is no sufficient material on record to conclude the controversy regarding the original ownership of the properties in question, considering the fact that the petitioners have been enjoying the use and occupation of the properties in question since decades, considering the fact that it has not been the case that construction in

any manner infringes any of the building bylaws, rules and regulations and lastly considering the fact that it is not even the case of the Government that construction encroached on any public road, I do not find it appropriate at this stage to permit the Government to proceed further with the proposed show cause notice. Though titled as show cause notice, notice dated 02-02-1999 is based on the conclusion of the Government that the occupation of the petitioners is unauthorised. No useful purpose would therefore, be served in relegating the petitioners to the Government since in so far as the stand of the Government is concerned, the same cannot be stated to be tentative."

4. Same situation prevails in the present case and therefore, the impugned notices, which were quashed in the above decision of this Court, deserves to be quashed in the present petition also which is subject matter of this petition. Hence, the impugned notices are quashed and set aside. Rule made absolute with no order as to costs.

(JAYANT PATEL, J.)

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